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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,893	10/24/2003	Kent W. Savage	2181.03-7712US	8706
24247 7590 12/12/2008				
TRASK BRITT				
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EXAMINER				
SHAY, DAVID M				
ART UNIT		PAPER NUMBER		
3769				
NOTIFICATION DATE		DELIVERY MODE		
12/12/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/692,893

Applicant(s)

SAVAGE, KENT W.

Examiner

david shay

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 23, 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25, 56-67 and 69-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25, 56-67 and 69-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 23, 2008 has been entered.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “means for downloading software to the processor from an external source”; “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “portable housing at least partially containing the light source”; “window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

It is noted that the terms: "means for downloading software to the processor from an external source" satisfy the three pronged test for a means plus function recitation and with be treated as such herein. See MPEP 2181(I)

Applicant argues that the phrase in claim 1 is not new matter with the cancellation of the term "from the plurality of light sources" therefrom and points to paragraph [0040] for support. The examiner must respectfully disagree. The value of 2,500 lux only occurs once in the originally filed disclosure (paragraph [0026]), and there is no distance whatsoever associated with this portion of the disclosure, nor is this luminance value discussed with respect to the LED embodiment. Thus this argument is not convincing.

Applicant argues that claims 65 and 66 recite limitations to the input device "e.g. that the data input device comprises at least one button" (emphasis in original), however, applicant has failed to indicate what type of input device is excluded by this recitation, since, as stated previously, any type of input device can input data pertaining to the subject. Thus the exact "configuration" of the input device that would prevent the input of e.g. subject data, is unclear.

With regard to Whitcher, applicant argues that the CCFL backlights are not visible. However, as none of claims 87-89 recite the light sources as being CCFL tubes, this is not persuasive.

As to the Marsh device, applicant makes several arguments regarding the Marsh EXIT sign. The current claims would, in the examiner's view read on the traffic light embodiment of Marsh, which can be carried and is therefore portable, as well as the task light version of Marsh. Although the EXIT sign embodiment no longer reads on the claims as they are currently drafted, the examiner respectfully notes that the EXIT sign can include a plurality of bulbs see Figures 3 and 5, and column 8, line 65 to column 9, line 48., light bulbs, and mountable lamps" are all "hand-held" as they are capable of being held in the hand. If desired the examiner can provide affidavit evidence that he has seen mountable lamps, light bulbs, and traffic lights held in the hand well prior to 1995, for example. Thus these devices are clearly "hand-held" within the broadest reasonable definition of the term. Any flash light version of Marsh would read on the light output requirement by the same analysis as Bamber et al. provided previously.

As to Penderson et al, applicant argues that Penderson et al does not discuss a light source that outputs an intensity of less than about 2,500 lux. The examiner must respectfully disagree. The range inferred by the term "about 2,500 lux" clearly indicates numerical values larger and smaller than 2,500 lux, for example 2,501 lux. As the teachings of Penderson et al encompass a source of 2,500 lux (see the instant remarks, page 20, the penultimate sentence thereon), which is clearly less than 2,501 lux (or "about 2,500 lux"), the source of Penderson et al clearly reads on claim 1 and its dependents. With regard to claim 83, a new interpretation of Penderson et al has been supplied.

Regarding Yano et al, a new interpretation of the reference with respect to the light emitters has been supplied. Applicant also argues that Yano et al do not discuss the light emitted thereby as being suitable for “ocular light therapy”. However, applicant has provided no parameters associated with such therapy, other than the light be directed to the eyes, which the light of the Yano et al device is clearly intended to be. Further, as all structural limitations of the claim are met by Yano et al, if there is some aspect of Yano et al that renders it inappropriate for ocular light therapy, then the instant claims are incomplete. Thus this argument is not convincing. With regard to the cover configured to “rest flat on a surface”, this limitation must be read in light of the specification. Since claim 83 appears to be drawn to the species of Figures 2 and 3 of the originally filed disclosure, and, as clearly can be seen from these figures, the base portion (i.e. element 36) clearly has a hollow therein, which receives the front portion of the device and mates with the lip surrounding the screen portion of the device, there is in fact only a line contact at the perimeter of element 36. Thus, if the cover of Yano et al, which similarly has a line contact with the surface, can also be construed to “rest flat” within the broadest reasonable interpretation of the phrase when read in light of the disclosure.

Concerning the rejection under 35 USC 103, applicant argues that the one of ordinary skill in the art would not consider the output of e.g. hand held computers “suitable for ocular light therapy”. This argument is not convincing. As set forth above and in the previous office action, the wording applicant has chosen clearly shows that the suitability for ocular therapy cannot rest in the intensity of the light, but the spectral distribution. As there is no discussion whatsoever in the originally filed disclosure what renders light “suitable for ocular therapy” one must rely on the prosecution history for the definition of such a term, and this indicates that

“white light” as would be generated by white background on a PC, cell phone, or other CCFL backlit screen, would be “suitable for ocular therapy”. Thus, the illuminance being specifically excluded from the characteristics of light “suitable for ocular therapy”, does not affect claims which do not recite a particular range of illuminance.

As to the combination of Penderson et al and March, applicant argues that Penderson et al teaches away from using fluorescent bulbs, citing column 1, lines 21-23 of Penderson et al. The examiner respectfully submits that applicant has misconstrued the teachings of Penderson et al. As can readily be seen from the immediately preceding text in Penderson et al, which refers to “relatively large devices which are floor or desk mountable”, thus it is clearly relatively large devices which Penderson et al teach away from, not devices which are portable (e.g. flashlights, as taught by Marsh) which simply happen to employ fluorescent bulbs as the light source. Thus this argument is not convincing.

The examiner has taken official notice of the use of clamshell-type Cases, which are notorious in the art for smaller Computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display; and to include an inverter, since these are needed for running CCFLs from DC sources. Applicant has not challenged the examiner's holding, thus this is considered to be admitted prior art (MPEP 2144.03).

The specification is objected to as containing browser executable code in the form of a hyperlink in paragraph [0025], this is impermissible and must be deleted. See MPEP 608.01 VII.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The amendment filed September 23, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: “illuminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy”; “illuminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes”; “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “the processor is programmed to control the amount of light”; “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn”; “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “portable housing at least partially containing the light source”; “window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; “at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-23, 25, 57-67, and 69-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

claimed invention. The originally filed disclosure is silent on “hardware in the data processor” and “illuminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy”; “illuminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes”; “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “the processor is programmed to control the amount of light”; specific structures, materials, or acts describing the means for downloading (see MPEP 2181(II)); “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn”; “portable housing at least partially containing the light source”; “window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; “at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-20, 56-67, 69-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 73 are indefinite because the precise meaning of the term “light emission area” is unclear, especially because the bulbs are “arranged across a light emission area”

appearing to indicate the light emission area is the area that the lights are mounted on, but also requiring that lights “illuminate the light emission area” implying this area is an area remote from and in front of the lights. Claim 1 is further indefinite because the term “less than about 2,500 lux is indefinite, because there is nothing in the originally filed disclosure or the prior art to provide any indication of what range of specific activity is covered by the term “about” (see *Amgen, Inc v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed Cir. 1991) and MPEP 2173.05(b)(A)). Claim 69 is indefinite because it depends from a cancelled claim, for the purposes of examination, this claim will be treated as though it depends from claim 67, since this is the claim from which cancelled claim 68 depended. Claim 69 is further indefinite because there are no specific structures, materials, or acts describing the means for downloading in the originally filed disclosure, thus the equivalents thereof covered by the means recitation are unclear. See MPEP 2181(III).

Claims 87-89 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whitcher.

See figure 3 and column 1, line 31 to column 6, line 23, wherein the screen is the source.

Claims 1-5, 11, 13, 18-21, and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-18; column 1, line 54 to column 6, line 60; column 8, line 65 to column 12, line 22; and column 12, line 60 to column 14, line 39, wherein e.g. the diameter of a single output device is considered the “peripheral dimension”.

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-72, 83-89, and 93-95 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pederson et al.

Wherein the vehicle mounted device could be pivoted under the vehicle dashboard.

Claims 83-88, and 93-97 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Yano et al.

See figures 14A to 22C and column 8, line 3 to column 18, line 20, wherein each pixel of the display is a light emitting element.

Claims 83-89, and 93-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al. Pederson et al teach a device such as claimed which can be mounted in a vehicle. It would have been obvious to the artisan of ordinary skill to mount the device in a vehicle with a dash board mounted cigarette lighter, such as a 1969 Camaro Z-1, and pivot the device under the dashboard when not in use, so as to prevent theft, and to employ light of primarily a blue wavelength, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides beneficial therapeutic effects, thus producing a device such as claimed.

Claims 1, 2, 4-6, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al, HP Jornada 700 Series Handheld PC Users Guide and the admitted prior art that inverters are needed for running CCFLs from DC sources. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL, wherein each pixel is considered a light source. Arao et al teach the use of multiple CCFLs and reflectors in a light output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see

Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which has already been taken, to include means for receiving data from external sources, such as disk drives, since these are notorious devices routinely included in computers, official notice of which is hereby taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, since this conserves battery power, as shown by HP Jornada 700 Series Handheld PC Users Guide, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Claims 1-3, 12-19, 56-67, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Terman et al and the admitted prior art that employing a clamshell-type case, is notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming, lighting, and control devices of Terman et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the programming or peripherals and to include multiple CCFLs, since this would provide more even illumination of the screen, or to employ the device

of Whitcher et al as the driver for the output of Terman et al, since Terman et al teach that any type of driver device can be used and since the device of Whitcher et al is shock resistant and versatile, wherein stopping or modifying the power from the inverter is considered “controlling the inverter”; and in either case to employ a clamshell-type case, as these are notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display, official notice of which has already been taken, thus producing a device such as claimed.

Claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh. Pederson et al teach a handheld device which emits light suitable for ocular therapy using LEDs as tile illumination source. Marsh teaches the use of an inverter and multiple CCFLs and reflectors in place of LEDs in a light output module. It would have been obvious to the artisan of ordinary skill to employ the inverter and CCFLs of Marsh in the device of Pederson et al, since these provide more uniform brightness, as taught by Marsh, or alternatively, to employ the portable devices taught by Marsh for therapy, as taught by Pederson et al, since this would provide a beneficial medical effect, and in either case to employ parabolic reflectors with the CCFLs at the focus thereof, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides maximum transfer of the light in the desired direction, to configure the device to have a maximum weight of four pounds, since this is not critical; is well within the skill of one having ordinary skill in the art, as the originally filed disclosure provides no particular materials, arrangements, or devices which enable the achievement of such a weight;

and provides no unexpected result, and because Pederson et al state that the weight should be minimized, thus producing a device such as claimed.

Claims 63 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh as applied to claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92, and further in combination with Terman et al. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming and control devices of Terman et al in the combined device of Pederson et al and Marsh, since these provide lighting which is appropriate to treat the conditions sought to be treated by Pederson et al, thus producing a device such as claimed.

Applicant's arguments filed July 23, 2007 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson, can be reached on Monday through Friday from 7:00 a.m. to 3:30 p.m. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3769